

REMARKS

A. Background

Claims 39-62 were pending in the application at the time of the Office Action. Claims 39, 43-45, 47, 50, 51, 53, 54, and 58-61 were rejected as being anticipated by cited art. Claims 40-42, 46, 48, 49, 52, 55, 56, 57, and 62 were objected to as being dependent upon a rejected base claim. Applicant has herein cancelled claims 48 and 62; amended claims 39, 47, and 53; and added new claims 63-67. As such, claims 39-47, 49-61, and 63-67 are presented for the Examiner's consideration in light of the following remarks.

B. Proposed Amendments

Applicant has herein amended claim 39 to recite, in part, that the bin has "a perimeter side wall upstanding from the floor, the perimeter side wall at least substantially encircling the chamber and the collapsible bag within the chamber." New claims 63 and 64 that depend from claim 39 have been added to further define the perimeter side wall. Support for these amendments and new claims can be found at least at Figure 14 and paragraphs 0038-0045 and 0084-0086 of the specification as originally filed. Applicant has amended claims 47 and 53 to incorporate the limitations of claims 48 and 62, respectively. New claim 65 is the combination of prior claims 39 and 40; new claim 66 is the combination of prior claims 39 and 42; and new claim 67 is the combination of prior claims 47 and 52. Applicant has also amended the specification to correct typographical errors. In view of the foregoing, Applicant submits that the amendments to the claims and the specification do not introduce new matter and entry thereof is respectfully requested.

C. Rejections based on 35 USC § 102

Page 2 of the Office Action rejects claims 39, 43-45, 47, 50, 51, 53, 54, and 58-61 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,897,012 to Sortwell (“*Sortwell*”). Applicant respectfully traverses this rejection. Of the rejected claims, claims 39, 47, and 53 are independent claims.

i. Independent claim 39

Applicant submits that *Sortwell* does not anticipate claim 39 because *Sortwell* does not include each and every claim limitation recited in the rejected claims. Specifically, Applicant submits that *Sortwell* does not teach or suggest the step of “positioning a collapsible bag within a chamber of a bin so that the collapsible bag rests on a floor of the bin, the bin having a perimeter side wall upstanding from the floor, the perimeter side wall at least substantially encircling the chamber and the collapsible bag within the chamber,” as recited in amended independent claim 39.

As perhaps best shown in Figure 1, *Sortwell* discloses a collapsible bulk container 20 comprising a flexible bag 22 and a frame 24 used to support bag 22. Frame 24 includes a pallet base portion 26 on which bag 22 rests and an upper frame portion 28 which is disposed on top of bag 22. Four post-like articulated frame members 30a-d extend up from the corners of pallet base portion 26 to upper frame portion 28. Open space is shown between each articulated frame member 30. *Sortwell* discloses no other support or other structures disposed between pallet base portion 26 and upper frame portion 28. As such, the “chamber” of *Sortwell* (defined in the Office Action as “the area that holds bag 22”) is bound on the sides only by the post-like articulated members 30, with substantial open space therebetween.

Because *Sortwell* only discloses four, spaced part, post-like articulated frame members 30 upstanding from pallet base portion 26 on which bag 22 is disposed, Applicant respectfully submits that *Sortwell* does not disclose or suggest “positioning a collapsible bag within a chamber of a bin so that the collapsible bag rests on a floor of the bin, the bin having a perimeter side wall upstanding from the floor, the perimeter side wall at least substantially encircling the chamber and the collapsible bag within the chamber,” as recited in amended independent claim 39. Accordingly, Applicant respectfully submits that the anticipation rejection of claim 39 should be withdrawn.

Claims 40, 42-46, 58-60 and new claims 63-64 depend from claim 39 and thus incorporate the limitations thereof. As such, Applicant submits that claims 40, 42-46, 58-60 and 63-64 are also distinguished over *Sortwell* for at least the same reasons as discussed above with regard to claim 39. Accordingly, Applicant respectfully submits that the anticipation rejection of claims 40, 42-46, and 58-60 should also be withdrawn.

Furthermore, Applicant submits that it would not be obvious to modify the collapsible bulk container 20 of *Sortwell* to obtain the invention of claim 39. *Sortwell* discloses that frame 24 “is capable of being gradually collapsed as the flexible bag 22 empties, or gradually erected by the flexible bag 22 during filling [of the flexible bag].” Col. 3, lines 2-5; see also Abstract. To facilitate the collapsing of frame 24, each articulated frame member 30 is hinged at the top, the middle, and the bottom (hinges 34, 32, and 36) so as to allow the articulated member 30 to fold onto itself. See Figure 1.

The method of use of *Sortwell* is shown in Figures 6-11. When bag 22 is full, articulated frame members 30 are in their extended, post-like position and upper frame portion 28 rests on bag 22 and is spaced apart from pallet base portion 26. As bag 22 empties, the bag decreases in

size. As this occurs, the weight of upper frame portion 28 causes articulated frame members 30 to bend at the hinges, allowing upper frame portion 28 to lower and thereby remain resting on the emptying bag 22. When bag 22 is completely emptied, articulated frame members 30 are completely folded in half and upper frame portion 28 is disposed just above pallet base portion 26.

Applicant submits that it would not be obvious to modify collapsible bulk container 20 of *Sortwell* to include a perimeter side wall that upstands from pallet base portion 26 and that at least substantially encircles the chamber and the collapsible bag 22 within the chamber. Such a modification would add substantial cost to the system and would interfere with the collapsible nature of the *Sortwell* device, which is disclosed as one of the main objects of *Sortwell*. See col. 2, lines 8-12.

ii. Independent claims 47 and 53

Applicant submits that in view of amendments made herein to independent claims 47 and 53, rejected claims 47, 50, 51, 53, 54, and 61 are in allowable condition, as detailed below.

D. Allowable Subject Matter

Page 3 of the Office Action objects to claims 40-42, 46, 48, 49, 52, 55, 56, 57 and 62 as being dependent upon a rejected base claim, but states that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claims 41 and 49, contrary to the assertion of the Office Action, those claims as pending are already in independent format. Applicant thus submits that claims 41 and 49 are in allowable condition. Claim 56 depends from claim 41 and is in allowable condition.

Regarding the rest of the objected-to claims, as noted above, Applicant has amended claims 47 and 53 to respectively incorporate the limitations of claims 48 and 62, which previously depended directly therefrom. As such, Applicant respectfully submits that independent claims 47 and 53 are allowable for at least the same reasons that claims 48 and 62 were considered allowable in the Office Action. Claims 50-52, 54, 55, 57, and 61 each depend from one of claims 47 and 53 and thus are allowable for at least the same reasons as discussed above with regard to claims 47 and 53.

New claim 65 is the combination of prior claims 39 and 40; new claim 66 is the combination of prior claims 39 and 42; and new claim 67 is the combination of prior claims 47 and 52. As such, applicant submits that new claims 65, 66, and 67 are allowable for at least the same reasons that claims 40, 42, and 52, respectively, were considered allowable in the Office Action.

In connection with the foregoing, Applicant respectfully notes that an objection, by definition, concerns only the form of the claim(s) (as distinguished from the substance of the claim) with respect to which the objection has been posed. See *MPEP §§ 706.01, 608.01(n)* (emphasis added). Thus, simply rewriting a dependent claim in the manner suggested by the Office Action constitutes only a change to the format of the claim and, without more, has no effect with regard to the substance of the rewritten claim.

Accordingly, because claims 47 and 53 and new claims 65, 66, and 67 have only been amended to include limitations of claims that depended therefrom or to combine previously pending independent and dependent claims, Applicant respectfully submits that no change has been made herein to the substance of the claims.

No other objections or rejections are set forth in the Office Action.

E. Conclusion

Applicant notes that this response does not discuss every reason why the claims of the present application are distinguished over the cited art. Most notably, applicant submits that many if not all of the dependent claims are independently distinguishable over the cited art. Applicant has merely submitted those arguments which it considers sufficient to clearly distinguish the claims over the cited art.

In view of the foregoing, applicant respectfully requests the Examiner's reconsideration and allowance of claims 39-47, 49-61, and 63-67 as amended and presented herein.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 14th day of August 2007.

Respectfully submitted,

/Dana L. Tangren/ Reg. # 37246
DANA L. TANGREN

Attorney for Applicant
Registration No. 37,246
Customer No. 022913
Telephone No. 801.533.9800

DLT:dfw

W:\11398\65.1\SW0000000300V001.DOC